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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ULYSSES URIBE,

Defendant and Appellant.

A132802

(Sonoma County
Super. Ct. No. SCR590445)

Defendant Ulysses Uribe appeals following his no contest plea to one count of possessing a loaded firearm in a public place within a vehicle in violation of California Penal Code¹ section 12031(a)(1). Imposition of sentence was suspended. Uribe was ordered to serve 90 days in county jail and placed on probation for three years. Uribe contends his conviction must be reversed because a suppression hearing was held in his absence. Although we do not condone the court's determination to proceed without Uribe present for the suppression hearing, his absence was not prejudicial. We affirm.

BACKGROUND

Petaluma police officer Jedidiah Mackey testified at the preliminary hearing and in the hearing on the suppression motion. The facts are taken from his testimony. Officer Mackey was driving his patrol car southbound on Highway 101 just north of the Lakeville Highway when he spotted a car in the right lane that had a plastic cover on its license plate. He also noticed something hanging from the car's rearview mirror. He

¹ All subsequent statutory references are to the Penal Code.

pulled up alongside the car and saw that the hanging item was an air freshener that was approximately four inches by six inches. He decided to make a traffic stop and pulled the car over because he was concerned the air freshener posed a safety hazard that obstructed the driver's vision.

There were three people in the car. Uribe was the sole passenger in the back seat. As officer Mackey approached the car, he instructed the driver to lower the driver's side rear window. When the window was down, Officer Mackey saw a stack of camouflage clothing and a pair of night vision goggles in the area of the back seat behind the driver. He also immediately smelled the strong odor of marijuana. Based upon his training and experience the officer was concerned the car's occupants were involved in growing marijuana. He ordered them to keep their hands where he could see them, and he called for back-up. More officers arrived approximately five to eight minutes later.

Once the additional officers arrived, they handcuffed Uribe and his two colleagues and got them all out of the car. Out of concern for their safety, the officers searched the car for weapons. They found four handguns, a rifle and a shotgun in the trunk. All of the handguns were loaded with live ammunition, and each had a bullet in the firing chamber. Based upon the strong odor of marijuana and the discovery of weapons, officers conducted a full search of the car. They found two bulletproof vests, two ski masks, some camouflage clothing, and a branch that appeared to be recently harvested marijuana.

The driver of the car was charged in an information for being a felon in unlawful possession of firearms in violation of section 12021, subdivision (a)(1), and all three men were charged with possessing a loaded firearm in a public place within a vehicle in violation of section 12031, subdivision (a)(1).

Uribe initially entered a plea of not guilty to the information. He joined in a co-defendant's motion to suppress the evidence seized in the traffic stop on the basis that the stop was not justified and the defendants were excessively detained prior to the search of

the car. When the motion to suppress was called for hearing, Uribe was not present in court. Counsel explained that she had heard from Uribe and his bail bondsman that Uribe's father was in a traffic accident and critically injured. The court declined to continue the proceedings or stay a bench warrant it issued for Uribe's arrest due to his failure to appear. His counsel objected to the hearing proceeding in Uribe's absence. The hearing proceeded and the motion was denied.

When the case was scheduled to proceed to trial in April 2011, Uribe changed his plea. He entered a no contest plea to a single count of possessing a loaded firearm in a vehicle in violation of section 12031, subdivision (a)(1). Imposition of judgment was suspended, and Uribe was ordered to serve 90 days in county jail and placed on three year's probation. He timely appealed.

DISCUSSION

A criminal defendant has the right to be personally present at critical stages of the proceedings against him. (*People v. Waidla* (2000) 22 Cal.4th 690, 741.) To the extent that a criminal defendant is excluded from a proceeding that measures facts against the law, we apply the independent or de novo standard of review. (*Ibid.*) But it is incumbent on the defendant to show that his absence prejudiced his case or denied him a fair trial. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1357.)

Uribe argues that a suppression hearing is a critical stage in the proceedings, and that the court should have continued the hearing after his counsel proffered a valid excuse for his absence. We will assume for purposes of our analysis that, on this record, the hearing should not have been held in Uribe's absence. But our agreement with Uribe on that point does not end our inquiry. When we consider whether Uribe's absence was prejudicial, based upon our independent review, we conclude that it was not.

Uribe says that the issues in the suppression hearing turned on Officer Mackey's credibility and recall, and that as a passenger in the car, unlike the driver, his attention would not have been diverted and he could pay closer attention to the officer's conduct

during the stop. Thus, Uribe implies that he could have assisted his counsel during the suppression hearing. But Uribe was not the only passenger in the vehicle. Both Uribe's co-defendants were present at the hearing, and Officer Mackey's credibility and ability to recall the events was extensively challenged by their counsels' cross-examination. The trial court correctly determined based upon the evidence that the investigatory stop of the car was justified by possible vehicle code violations related to the air freshener hanging from the rearview mirror and the covered rear license plate. The court also reasonably concluded the stop was not prolonged, and that the search and seizure of the material in the car was reasonable in the circumstances. Nothing in the record gives us pause for concern that Uribe's absence affected the outcome of the suppression hearing.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.